IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 2473 of 2007(S)

OA.738/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **K. SREENIVAS KANNAN, S/O.KUTTAPPAN NAIR, AGED 27 YEARS, OFFICIATING GDSMM, RAILWAY MAIL SERVICE, KAYAMKULAM RMS TV DIVISION, RESIDING AT KALATHIL HOUSE, PERINGALA P.O., KAYAMKULAM, ALLEPPEY DISTRICT.**

2. **R. RAJESH, S/O.RADHAKRISHNA PILLAI, AGED 29 YEARS, OFFICIATING GDS MAIL MAN, RMS KAYAMKULAM, TV DIVISION, RESIDING AT RAJESH BHAVAN, MUTHUKULAM NORTH, CHOOLATHERUVU P.O ALLEPPEY.**

3. **G. UNNIKRISHNAN, S/O.GANGADHARAN NAIR, AGED 30 YEARS, OFFICIATING GDSMM, RMS KAYAMKULAM, RMS TV DIVISION, RESIDING AT PATHIYAMUGAM, CHOOLATHERUVU P.O., MUTHUKULAM, ALLEPPEY.**

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.B.HARISH KUMAR

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF COMMUNICATIONS, NEW DELHI.**

2. **CHIEF POSTMASTER GENERAL, KERALA CIRCLE, THIRUVANANTHAPURAM.**

3. **SENIOR SUPERINTENDENT OF RMS, RMS TV DIVISION, THIRUVANANTHAPURAM.**

4. SUB RECORD OFFICER,
RMS TV DIVISION, KAYAMKULAM.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG FOR R1 TO R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE O.A.NO.738/2003 FILED BEFORE THE CAT ERNAKULAM BENCH.

EXT.P2: COPY OF THE REPLY STATEMENT IN O.A.NO.738/2003 FILED BY THE RESPONDENTS.

EXT.P3: COPY OF THE REJOINDER IN O.A.NO.738/2003 FILED BY THE PETITIONERS.

EXT.P4: COPY OF THE COMMON ORDER IN O.A.738/2003 AND OTHER CASES DATED 31.7.2006 OF THE CAT, ERNAKULAM BENCH.

EXT.P5: COPY OF THE R.A.NO.32/2006 IN O.A.NO.738/2003 FILED BEFORE THE CAT, ERNAKULAM BENCH.

EXT.P6: COPY OF THE ORDER IN R.A.NO.32/2006 IN O.A.NO.738/2003.

EXT.P7: COPY OF THE JUDGMENT DATED 13.12.2001 IN O.P.NO.3542/2000 OF THIS HONOURABLE COURT.

EXT.P8: COPY OF THE JUDGMENT IN O.A.NO.801/2004 OF THE CAT, ERNAKULAM BENCH.

EXT.P9: COPY OF THE JUDGMENT IN O.A.NO.447/2002 OF THE CAT, ERNAKULAM BENCH.

/TRUE COPY/

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.2473 OF 2007

Dated 26th March, 2007

JUDGMENT

Koshy,J.

This is a petition challenging the order of the Central Administrative Tribunal in O.A.No.738 of 2003 as well as the dismissal of the review petition. According to the petitioners, they have completed 240 days as casual labourers and they are entitled for preference in the matter of appointment as GDSMM in terms of the letter of the Director General (Posts) No.17-141/88-ED&Trg dated 6.6.1988 as well as the letter of the Assistant Director (Recruitment) No.Rectt/27-1/IV dated 31.3.1992. It is stated in the above letters that casual labourers whether full time or part time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED (now known as GDS) posts provided they satisfy the conditions that they have put in a minimum of one year's service (240 days in an year is reckoned as one year service). According to the respondents, there was a ban in appointing casual labourers and, therefore, petitioners are not entitled to get the benefit of the above letters. The ban against the appointment of casual labourers is Annexure R1. In that letter, an earlier letter dated

7.6.1988 was referred which emphasises that persons on daily wages should not be recruited for work of regular nature continuously and engagement of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature. Annexure R-1 only states that such direction should be scrupulously followed. In other words, ban is regarding the engagement of casual labourers continuously. The Tribunal denied the benefit of the letters dated 6.6.1988 and 31.3.1992 due to the ban of appointment of casual labourers and held that any person engaged for occasional work cannot be treated as casual labourer. We are of the opinion that view of the Tribunal that petitioners are not casual labourers cannot be accepted. When in the necessities of work persons are engaged occasionally, they are casual workers unless they are appointed as permanent workers or temporary workers. Substitute workers will get higher status than casual workers. In spite of the ban, if the workers are engaged for casual works, they became casual workers. The whole question is whether they have worked for 240 days in an year for getting the benefit of the two letters referred earlier. According to the petitioners, first petitioner has worked for 272 days in the year 2002, whereas second

petitioner has worked for 255 days and third petitioner has worked for 265 days. They filed an affidavit along with I.A.No.2635/2007 giving the details. But, that matter was not considered in detail by the Tribunal. In the above circumstances, the order of the Tribunal is set aside and the Tribunal is directed to consider whether the petitioners were worked for 240 days in the year of 2002. If that be so, automatically they will get the benefit of the two letters dated 6.6.1988 and 31.3.1992.

The writ petition is allowed by way of remand.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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